IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 19271 of 1998

Between:

N.Indra Reddy, S/o. Satyanarayana Reddy,
R/o. 12-13-635/2, Nagarjuna Nagar,
Tranaka , Secunderabad.

..... PETITIONER

AND

Kapra Municipality rep. by its Commissioner,
Kapra R.R.Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction especially one in the nature of Writ of Mandamus declaring the action of the1st, Respondent issuing the notice P.O. No. VC/MCK/TP/I/2/98 dt. 27-6-98 without mentioning about the particulars of deviations malafide, illegal, arbitrary and opposed to principles of natural justice and Consequently set aside the same as illegal, bad and not sustainable.

Counsel for the Petitioner:MR.K.V.BHANU PRASAD

Counsel for the Respondent: MR.POLISETTI RADHAKRISHNA

The Court made the following :

ORDER:

This writ petition is filed questioning the show cause notice dated 27.06.1998 under section 228 (1) and (2) of the A.P.Municipalities Act.

The facts in brief, which lead to filing the present writ petition are that the petitioner and his neighbour viz., Bal Reddy obtained a permission for construction of the building vide proceedings No.BA/162/11/91-98 dated 29-12-1997 and started construction. The petitioner alleges that when certain persons interfered with his construction activity, questioning the same he filed a suit in O.S.No.559 of 1998 on the file of the Junior Civil Judge (East and North) Ranga Reddy District for permanent injunction and obtained interim injunction on 4-6-1998. The petitioner contends that he is proceeding with the construction strictly in accordance with plan sanctioned by the first respondent and the first respondent at the instance of certain vested persons started interfering with his construction activity and issued the impugned notice dated 27-6-1998 to stop the construction. The petitioner questions the said notice mainly on the ground that the same was issued with a mala fide intention without specifying the deviations made by him in the construction.

This Court while admitting the writ petition granted interim stay of operation of the impugned notice dated 27-6-1998 by order dated 10-7-1998. Pursuant thereto, the respondent filed counter affidavit stating that while the petitioner was proceeding with his construction one Mr.Laik Ali Khan raised a dispute over the title of the property before the Vice Chairman, Hyderabad Urban Development Authority and based on the same, the HUDA vide letter dated 22-6-1998 directed the municipality to stop the construction activity. Based on the said letter dated 22-6-1998, the respondent has issued the impugned letter dated 27-6-1998 directing the petitioner to stop the construction. It was specifically admitted in the counter affidavit that the impugned notice does not indicate the deviations made by the petitioner. However, it is stated that on verification, it was noticed that the petitioner has made certain deviations with the sanctioned plan in the construction of the building.

Heard learned counsel for petitioner and learned Standing Counsel for respondent Municipality.

Having heard the counsel and on perusal of the material available on record, it is clear that at the instance of HUDA the impugned notice was issued to the petitioner, without conducting an inspection and notifying the deviations made by the petitioner. It was also admitted in the counter affidavit that there was no mention with regard to the deviations made by the petitioner in the impugned notice. Apart from the same, even in the counter affidavit the respondent did not chose to point out the

deviations made by the petitioner, except stating that on verification it was found that the construction is made in deviation of the sanctioned plan. Thus, the notice dated 27-6-1998 is liable to be quashed and accordingly the same is hereby quashed and the writ petition is allowed. However, this order does not preclude the respondent from issuing a fresh notice indicating the deviations, if any, made by the petitioner and proceeding further in the matter in accordance with law.

Accordingly, the writ petition is allowed. No costs.

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23.03.2005

To

1.Kapra Municipality rep. by its Commissioner,
Kapra R.R.Dist.

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